

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
RAFAEL SOTO,

Plaintiff,

-against-

Index No.
12 CV 4241
(MKB) (VVP)

THE CITY OF NEW YORK, COUNTY OF KINGS,
DISTRICT ATTORNEY CHARLES J. HYNES,
DETECTIVE DANIEL BONILLA, POLICE OFFICER
ADAM FEDER, ASSISTANT DISTRICT ATTORNEY
JOHN GIANNOTTI, ASSISTANT DISTRICT ATTORNEY
LINDSAY GERDES, LIEUTENANT CHRISTOPHER
MARROW, and DETECTIVE BRIAN MEICHSNER,
Defendants.

-----X

January 16, 2014
11:25 p.m.

EXAMINATION BEFORE TRIAL of ASSISTANT
DISTRICT ATTORNEY LINDSAY GERDES, one of the
Defendants here, taken by Plaintiff, held at
225 Broadway, New York, New York, pursuant
to Order, before a Notary Public of the
State of New York.

HARRIET BEIZER ASSOCIATES
'THE VERBATIM REPORTING SERVICE'
70-50 AUSTIN STREET
FOREST HILLS, NEW YORK 11375-4252
(718) 544-4199

1 L. GERDES, ESQ.

2 pieces of paper?

3 A Yes, I think so.

4 Q Now, is that set of
5 documents in Plaintiff's Exhibit 5 less
6 the documents that are marked as
7 Plaintiff's Exhibit No. 2?

8 A Is it less?

9 Q Right.

10 A This was also in the car.

11 Q This was also vouchered
12 under the same voucher number that --

13 A Exactly.

14 Q That was Voucher No.
15 S037740?

16 A Correct.

17 Q At the top of the page
18 that's marked, is that your handwriting
19 at the top?

20 A Yes.

21 Q That's at the top right?

22 A Yes.

23 Q Is there a particular
24 reason why you didn't review those
25 documents prior to Mr. Soto's arrest?

1 L. GERDES, ESQ.

2 A No. The police, basically,
3 just told me that they were miscellaneous
4 papers; like, receipts. That there were
5 no other -- I remember asking if there
6 were any other Home Depot receipts in the
7 car. They told me that there were no
8 other Home Depot receipts.

9 You know, like, the police
10 who were working on this knew what
11 evidence there was in the case. So, they
12 didn't, I guess, bring anything else;
13 like, you know, you really need to look
14 at this. They told me they were, kind
15 of, just miscellaneous receipts and
16 papers.

17 Q Now, from October 20, 2011,
18 until the day of Mr. Soto's arrest on
19 November 7, 2011, did you review only the
20 documents that the detectives would bring
21 to your attention, or did you conduct
22 your own investigation of the documents
23 or evidence?

24 A Well, the victim brought
25 documents to my attention. He brought

1 L. GERDES, ESQ.

2 those to the precinct and I saw those.

3 Then, everything else I looked at, I

4 believe, at that point was, basically,

5 collected from the police department.

6 Q My question is this: Would

7 you go to look for documents or evidence

8 that you believed was pertinent, or did

9 you only review what the officers or

10 detectives would bring to you and say was

11 pertinent?

12 A I didn't have anything else

13 to review at that time.

14 Q Well, for instance, we can

15 both agree that prior to Mr. Soto's

16 arrest either you or the police came into

17 custody of these documents; correct?

18 A Correct.

19 Q These documents are marked

20 as Plaintiff's Exhibits 2 and 5; correct?

21 A Correct.

22 Q My question is: From what

23 you're telling me the police looked

24 through the documents, and then told you

25 what was pertinent, and you didn't look

1 L. GERDES, ESQ.

2 for yourself; is that correct?

3 A That's correct.

4 Q Generally, up until the
5 time that Mr. Soto was arrested, is that
6 how you conducted your investigation;
7 that you only looked at what the officers
8 told you was pertinent?

9 MR. FRANCOLLA: Objection.

10 A We talked about these
11 receipts. Like, they, basically, were
12 saying they were -- I'm not a prosecutor
13 who -- I think you would find anyone in
14 the office who would say that I am not
15 somebody who's very prepared,
16 investigates cases and does that. So, to
17 a certain extent, I guess, when it comes
18 to the contents of this specific voucher,
19 I did not look at the specific contents
20 of this particular voucher.

21 I was relying on what the
22 police told me when they said -- they,
23 kind of, said that the van was, kind of,
24 messy and jumbled, and it was, like,
25 miscellaneous papers. I mean, that's how

1 L. GERDES, ESQ.

2 they classified them even on the voucher.

3 So, when it comes to -- you
4 know, I don't want to -- I just want to
5 speak about this voucher and these papers
6 specifically. I was relying on what they
7 told me about these other papers.

8 Q Certainly. My question is
9 just generally about the way you
10 conducted the investigation, because you
11 conducted an investigation, as well; is
12 that correct?

13 MR. FRANCOLLA: Objection
14 to the --

15 A We were doing it together.
16 I mean, we were all doing it together.
17 It's difficult as far as me conducting an
18 investigation.

19 Q I'm not trying to suggest
20 that they were directing you or you were
21 directing them. I'm just asking you:
22 Did you investigate the claims that
23 Yoshida made in connection with this
24 criminal act on 10/20/11?

25 A Yes.

1 L. GERDES, ESQ.

2 Q Did you investigate before
3 or after Mr. Soto was arrested?

4 A Before.

5 Q My question then is: As
6 part of your investigative acts, did you
7 review documents in evidence that the
8 police had gathered or that you had
9 gathered?

10 A Yes.

11 Q In the case of documents
12 that the police had gathered, as a matter
13 of practice, did you go through
14 everything yourself to determine what was
15 pertinent, or did you allow the officers
16 to determine what was pertinent before
17 you looked at it?

18 A I can't answer the question
19 as a whole. If you want to ask me, like,
20 about certain things. Overall, in this
21 case, they, kind of, found things and
22 then showed me or presented it to me once
23 they, you know, discovered it or
24 recovered it or collected it.

25 This wasn't a case where

1 L. GERDES, ESQ.

2 I -- you know, I never personally went to
3 Home Depot. I didn't go to the TARU.

4 So, I was, basically, being kept informed
5 of information as it was coming to light.
6 Also, speaking to the victim and learning
7 things from the victim. I'm trying to
8 answer as best I can.

9 Q I understand. For
10 instance, in the case of this voucher,
11 you indicated that you didn't
12 independently look through all the
13 documents even though you knew that these
14 documents existed; correct, before Mr.
15 Soto was arrested?

16 A Correct.

17 Q My question to you then is:
18 For the rest of the vouchers and
19 vouchered evidence that the police
20 collected, did you independently go
21 through each voucher, or did you only go
22 through that voucher if the police said,
23 hey, look, here is some information that
24 is pertinent to this investigation?

25 A Well, I saw a lot of it

1 L. GERDES, ESQ.

2 before it was vouchered, because I was at
3 the precinct. Like, you know, I saw the
4 guns before they were vouchered. I saw
5 the zip ties. I saw, like, this thing
6 that goes over a person's head with eye
7 holes cut out. I saw bloody gloves. I
8 saw a bloody hammer.

9 I saw pictures. I never
10 personally inspected Soto's FedEx van,
11 but they took pictures on 10/24/11. I
12 saw all of the pictures of the van. It's
13 not as if they only showed me the picture
14 of the bullet in the cup holder there,
15 for example. I saw all of those
16 pictures.

17 Q That was on 10/20/11;
18 correct, that you saw all of these
19 things?

20 A Well, the FedEx van was
21 10/24/11.

22 Q Except for the FedEx van,
23 yes. My question is: After you leave
24 the precinct, do you go back to the
25 precinct to continue to investigate?

1 L. GERDES, ESQ.

2 A No, that was the only time
3 in connection with this case that I was
4 at the precinct.

5 Q As the detectives would
6 find things or voucher things, would they
7 send you the voucher numbers, et cetera?

8 A I think they might have
9 given me a lot of the paperwork when they
10 came to Grand Jury.

11 Q Between the time of
12 10/20/11, when you were at the precinct,
13 and excluding the time when they gave you
14 the photos on 10/24/11, before Mr. Soto
15 was arrested, did you ask the police
16 officer if they came up with any more
17 documents or evidence regarding the
18 incident on 10/20/11?

19 A Of course, because, you
20 know, we got subpoenas for the phones, or
21 the police did. I don't remember who got
22 the subpoenas. So, I knew Detective
23 Bonilla was going to TARU to get the
24 phones downloaded.

25 So, before Mr. Soto's

1 L. GERDES, ESQ.

2 arrest, I saw text messages from the
3 phone. On 10/24/11, I also learned that
4 they found in the van the Home Depot
5 receipt, which was for the packaging or
6 the purchase, I should say, of two packs
7 of 24 zip ties.

8 When they told me about
9 that, then Bonilla told me that he would
10 go out to the Home Depot. I believe it
11 was in Linden, New Jersey, maybe. The
12 receipt told us which Home Depot location
13 it was. Yes, it was in Linden, New
14 Jersey.

15 He went to that store and
16 had one of the loss prevention officers
17 download video surveillance that
18 corresponded to the purchase of these zip
19 ties. Information on the receipt,
20 basically, identifies the register where
21 this transaction took place. There was a
22 self-checkout line.

23 So, they were able to hone
24 in right on this exact self-checkout line
25 at that time. The detective got the

1 L. GERDES, ESQ.

2 video and got stills printed from the
3 video, which captured Mena and Dickinson
4 buying the zip types.

5 The purchase of these zip
6 ties was made a mere 36 hours before the
7 victim is abducted. These were large zip
8 ties. They weren't just, you know, small
9 12-inch zip ties. They were industrial
10 grade zip ties that are the kind that you
11 would want to use to bind a person.

12 If you want to talk to me
13 about other uses for them, yes, I'm sure,
14 because Home Depot is probably not in the
15 business of selling zip ties to bind
16 human beings. So, yeah, there could be
17 other explanations for that.

18 When I saw that, what I was
19 seeing was evidence that somebody who I
20 knew was involved in this crime, Jonathan
21 Mena, was out purchasing zip ties 36
22 hours prior to Yoshida's abduction with
23 the man who had the van, the victim, you
24 know, used to get to the abduction with
25 that man's van. They purchased nothing

1 L. GERDES, ESQ.

2 else, other than these zip types.

3 I also noticed in the video
4 that Soto was the driver of the van that
5 day. It wasn't Mena who was driving the
6 van. Soto was the driver of the van.
7 These were the zip ties then that binds
8 the victim. So, this gave me very, very
9 probative, relevant and powerful evidence
10 connecting Soto to this case.

11 Q After 10/20/2011, what
12 other steps did you take to investigate
13 the incident on 10/20/2011?

14 A I was urging the detective
15 to get this video to me quick. To get
16 the results of this information quickly.
17 I mean, your client wasn't arrested.

18 Q I understand.

19 A You're asking me what other
20 steps. So, there was a period from
21 10/20/11 until 11/7/2011, where we were
22 seeing, you know, what direction the
23 evidence pointed us in.

24 Q Absolutely. I'm just
25 trying to figure out what steps you took

1 L. GERDES, ESQ.

2 along that route to get there. What
3 investigative steps --

4 A I reviewed the video
5 surveillance. I knew that this was
6 Jonathan Mena, because he was wearing the
7 same jacket that he was arrested in. I
8 also knew that this was clearly Rafaela
9 Soto, because he too was wearing the
10 same, like, jacket sweatshirt thing that
11 he wore to the police precinct on
12 10/21/11. So, I was able to compare
13 those two.

14 So, I have him with the
15 person who does the abduction in the car
16 that gets them to the scene of the
17 abduction. I also have the fact that,
18 you know, I know that the deal has fallen
19 through. That he is still looking for a
20 buyer and he doesn't have a deal. I
21 reviewed the subpoenas. You're asking me
22 a general question.

23 Q No, I'm not. It's not a
24 general question. I just need to know
25 the steps. I don't want to know what you

1 L. GERDES, ESQ.

2 knew.

3 A I'm listing those. I'm
4 reviewing this evidence.

5 Q Absolutely.

6 A That's a step. My review
7 is a big part of this.

8 Q I must have misunderstood
9 you then, because I heard you say, I knew
10 that he did X, Y, Z, because of something
11 else. I just want to know the steps you
12 took. That's it.

13 A I'm trying to tell you
14 that.

15 Q I apologize.

16 A No problem. So, I then saw
17 text messages between Mena and Soto that
18 were from Mena's telephone, and that
19 indicated to me about his wife and the
20 baby. It also indicated -- you know, I
21 reviewed the text message where Mena told
22 him -- when I say, "reviewed," I'm seeing
23 how these pieces of evidence fit together
24 with what we know.

25 Again, I know from what

1 L. GERDES, ESQ.

2 Mena -- excuse me. From what Dickinson
3 is telling us, there is a third person
4 involved. I know from the victim that
5 there is only one person who knew both
6 his address and the \$100,000 in the safe.
7 I know that the car used belongs to Soto.

8 Through my review of
9 everything, I know that Soto purchased
10 the zip ties. Soto is the one who was
11 ringing them up at the register, too. It
12 wasn't Mena ringing them up at the
13 register. Soto is the one who rang them
14 up and paid for them. Soto is the one
15 who then -- it's his van that they're
16 getting in.

17 I reviewed the text
18 messages where Mena is telling Soto, I
19 found a tiguere who can go over there
20 with me. I told him, you know, he's only
21 getting ten, because I'm getting twenty.

22 Q I apologize. Do you speak
23 Spanish?

24 A No.

25 Q Go ahead.

1 L. GERDES, ESQ.

2 A I took Spanish in high
3 school, but I'm not, like, fluent or
4 anything like that. Detective Bonilla
5 speaks a little bit of Spanish. Then, I
6 was also looking on, like, Urban
7 Dictionary on the computer.

8 There's, you know, what are
9 Puerto Rican slang words, or different
10 things like that. I was talking to other
11 people who speak Spanish who were
12 specifically Puerto Rican or Dominican,
13 and talking to people about what this
14 word means.

15 Basically, it means, like,
16 a -- it has a negative connotation. It
17 doesn't mean, like, I have a new employee
18 or a new businessman. In the context of
19 people who are Dominican and Puerto
20 Rican, it's, like, a downhome, dirty dude
21 who will go over there and, like, take
22 care of business.

23 Q We are going to go over
24 each of the text messages and talk about
25 what you gleaned from each one. So you

1 L. GERDES, ESQ.

2 reviewed text messages. You reviewed
3 this video surveillance. You asked the
4 detective to get the video surveillance.

5 Did you ask the detective
6 to get the text messages, or is that
7 something he did on his own?

8 A I can't remember.

9 Q Did you fill out any
10 paperwork so that the detective could get
11 into the cell phone as to getting a
12 warrant or something like that?

13 A I personally did not write
14 up a warrant, I don't believe.
15 Generally, my understanding is that TARU
16 doesn't go into a phone unless they have
17 a warrant. That's my general
18 understanding.

19 Q Now, before TARU went into
20 the phone to retrieve the text messages,
21 did you have any communications with
22 TARU?

23 A I never had any -- prior to
24 Soto's arrest, I never personally had any
25 conversations with TARU.

1 L. GERDES, ESQ.

2 Q You did indicate earlier,
3 as well, that Yoshida sent you an e-mail,
4 and that you reviewed it. Would that, as
5 well, be a part of it?

6 A No. The date on that
7 e-mail, I believe -- I can't remember the
8 date on the e-mail. If that's pre Soto's
9 arrest or post, I can't remember.

10 Q What else do you remember
11 doing?

12 A I can't really remember
13 anything else off the top of my head
14 right now.

15 Q Were you and the detectives
16 in constant communication about what to
17 do on the case and what decisions to make
18 as far as gathering evidence?

19 A We were in regular contact.

20 Q I am going to show you what
21 was marked as Defendant's Exhibit A on
22 January 15, 2014. Can you take a look at
23 that document?

24 A Sure.

25 Q Let me know when you're

1 L. GERDES, ESQ.

2 done.

3 A I'm done.

4 Q Can you tell me what that
5 document is?

6 A This is a Home Depot
7 receipt that was found. My understanding
8 from the police is that this was found in
9 Soto's van, along with a Home Depot bag.
10 Like, the store shopping bag. You know,
11 the little brown plastic bag. Also, with
12 this was the packaging for two packs of
13 24 zip ties.

14 On the video, I could see
15 that -- you can see what Soto has in his
16 hand. It's, essentially, you know, the
17 same length of the packaging and the zip
18 ties and the receipt confirms that those
19 are the 24-inch zip ties.

20 Q On this receipt, does it
21 indicate whether or not this purchase was
22 paid for in cash or with a credit card?

23 A It looks like cash.

24 Q Now, if you were looking at
25 this receipt in a vacuum, would you be

1 L. GERDES, ESQ.

2 able to tell from this receipt who
3 purchased the zip ties?

4 A Just this by itself, if I
5 look at this?

6 Q Yes.

7 A No. With the video
8 surveillance, I believe, it showed Soto
9 taking, actually, the money out of his
10 pocket and making the purchase.

11 Q My next question about this
12 receipt is: Can you tell from this
13 receipt what the brand name of the zip
14 ties are?

15 A At the time, I think, I
16 looked this up on the internet on Home
17 Depot. I had gone to their website and,
18 I think, that this stood for natural tie.

19 Q Did you ever go to Home
20 Depot to get a sample or to purchase the
21 zip ties that are reflected on this
22 receipt to compare them to the ones that
23 were recovered from the scene of the
24 incident?

25 A No, I did not.

1 L. GERDES, ESQ.

2 Q Did you direct anyone to do
3 that?

4 A No, I did not.

5 Q Do you know if any of the
6 detectives went to Home Depot to do that?

7 A Whether or not they took a
8 zip tie from the scene and asked Home
9 Depot if this zip tie was their zip tie?

10 Q Or compared it to the ones
11 that were on the shelf.

12 A Well, what I did was, I
13 looked at the video surveillance, which
14 shows the zip ties in Soto's hand, the
15 pack of zip ties.

16 So, you see the length.
17 You see what the packaging looks like.
18 It was clear packaging. You see that the
19 packaging was, basically, the same size.
20 When I say, "size," the length of the zip
21 tie.

22 Then I, myself, when I was
23 at the precinct, saw those zip ties. I
24 didn't see any serial numbers on the zip
25 ties or any stamps on the zip ties that

1 L. GERDES, ESQ.

2 said Home Depot, but I was able to do,
3 myself, a visual comparison of what Soto
4 had in his hands at the register.

5 Knowing that it was two
6 bags, also. Knowing then that two bags
7 were found in the van, two empty bags,
8 with the receipt, with the Home Depot
9 bag. You see them walking out with the
10 Home Depot bag.

11 So, you know, it's not like
12 they just walked out, oh, we don't need a
13 bag for these. They put them in a Home
14 Depot shopping bag and walked out. They
15 take the receipt, put the receipt in the
16 bag and walk out with those items. So, I
17 did a visual comparison of what I saw
18 Soto purchase versus the zip ties that
19 the police recovered.

20 Q So, the answer would be
21 that you don't know if the detectives
22 went to Home Depot to compare the zip
23 ties that were recovered to the ones that
24 Home Depot actually sells?

25 A Correct.

1 L. GERDES, ESQ.

2 knew it to be a fact. I think that I
3 believed he was shorter.

4 I saw his picture, which
5 was a shot of his body, and he appeared
6 to be smaller in stature than Mena. I
7 saw Mena physically at the precinct.

8 Q Did you see a picture of
9 this entire body?

10 A No. I just said I think --
11 I thought I said his upper. Like,
12 basically, from his shoulder up. He
13 appeared to have a smaller stature, and
14 the person in here appeared to have a
15 smaller stature. So, it's all of these
16 things together that are leading me to
17 draw what I believe is the one
18 inescapable conclusion that this is Mena
19 and Soto.

20 So, it's not just this one
21 picture by itself. If you look at the
22 hairline, it looks to be similar. The
23 hairline, the hair length.

24 Q The hairline in D97?

25 A D97 and D72, basically.

1 L. GERDES, ESQ.

2 This isn't a man with, like, a ponytail.

3 This isn't a black man with an Afro. You
4 know, the skin complexion, the length of
5 the hair.

6 Then getting into his van.

7 The fact that the guy was wearing the
8 exact same outfit and gets into the
9 driver's side of the FedEx van. We knew
10 that this was the same van, because one
11 side's FedEx you can see better than the
12 other. On the other side, it's, kind of,
13 like, peeling off.

14 I told you that, I think,
15 you could see that in this video. At
16 some point, you could see both sides, I
17 believe, of the FedEx van. It was really
18 no question that this was -- it's a very
19 unique -- I shouldn't say very unique,
20 but the way the markings peeled off, it
21 wasn't just, like, any FedEx van.

22 So, it was everything in
23 conjunction that led me to conclude that
24 this was Soto. That's all I can say.
25 When you ask me to point to one photo and

1 L. GERDES, ESQ.

2 say the marking for the record and how I
3 knew this was Rafael Soto, that's not the
4 way I engaged in reaching that conclusion
5 prior to Soto's arrest.

6 Q Let me ask you this
7 question: Just walking about, have you
8 ever seen someone wearing a jacket with a
9 sweatshirt underneath it?

10 A Sure.

11 Q Did you maybe think that in
12 that photo that when you saw the two
13 different types of shirts that maybe
14 someone was wearing a jacket with a
15 sweatshirt underneath it?

16 A Can you show me -- get out
17 the photograph where Soto is wearing this
18 exact same thing.

19 Q I will, but my question is
20 whether or not --

21 A But this isn't a red
22 jacket. This isn't a green-hooded
23 sweatshirt. It's a black leather jacket
24 and it hits, you know, right here
25 (indicating) at the -- it doesn't look